

House File 569 - Reprinted

HOUSE FILE 569
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 168)

(As Amended and Passed by the House March 24, 2015)

A BILL FOR

1 An Act relating to notice of garnishment and levy to a judgment
2 debtor.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 626.50, Code 2015, is amended to read as
2 follows:

3 **626.50 Duty to levy — notice of ownership or exemption —**
4 **notice to defendant.**

5 1. An officer is bound to levy an execution on any personal
6 property in the possession of, or that the officer has reason
7 to believe belongs to, the defendant, or on which the plaintiff
8 directs the officer to levy, after having received written
9 instructions for the levy from the plaintiff or the attorney
10 who had the execution issued to the sheriff, unless the officer
11 has received notice in writing under oath from some other
12 person, or that person's agent or attorney, that the property
13 belongs to the person, stating the nature of the person's
14 interests in the property, how and from whom the person
15 acquired the property, and the consideration paid for the
16 property; or from the defendant, that the property is exempt
17 from execution.

18 2. a. The officer making the levy in subsection 1 shall
19 promptly serve written notice of the levy on the defendant.
20 The notice shall be served in the same manner as provided for
21 original notice.

22 b. This ~~section~~ subsection is not applicable to garnishment
23 proceedings.

24 Sec. 2. Section 642.5, subsection 2, Code 2015, is amended
25 to read as follows:

26 2. The sheriff shall ~~append~~ file the answers to the
27 examination to the sheriff's return within seven business days
28 of receiving the answers.

29 Sec. 3. Section 642.14, Code 2015, is amended to read as
30 follows:

31 **642.14 Notice of garnishment proceedings.**

32 Judgment against the garnishee shall not be entered until
33 notice as required by section 642.14A or 642.14B has been
34 served upon the defendant in the main action ~~has had ten days'~~
35 ~~notice of the garnishment proceedings, to be served in the~~

~~1 same manner as original notices. However, if the garnishment
2 is to earnings owed such defendant by the garnishee, judgment
3 may be entered if notice to the defendant is served with the
4 notice of garnishment to the garnishee who shall deliver the
5 notice to the defendant with the remainder of or in lieu of the
6 defendant's earnings. The garnishee shall state in answer to
7 the service of notice of garnishment whether or not service of
8 notice was delivered to the defendant.~~

~~9 The notice required by this section shall contain the full
10 text of section 630.3A.~~

11 Sec. 4. Section 642.14A, Code 2015, is amended to read as
12 follows:

13 **642.14A Notice of garnishment and levy to defendant —**
14 **non-employer garnishees.**

15 1. Within seven If the garnishment is to property other than
16 earnings an employer owes a defendant, the judgment creditor
17 shall serve upon a debtor who is a natural person not later
18 than seven business days after execution is served upon a
19 garnishee, the sheriff shall send the sheriff's filing of a
20 garnishee's answers pursuant to section 642.5, subsection 2,
21 which show that the garnishee is indebted to the defendant, a
22 notice of garnishment and levy to the defendant in the main
23 action informing notifying the defendant that certain real and
24 personal property of the defendant may be exempt from execution
25 or garnishment and that a hearing process is available for the
26 defendant to claim such exemptions of the information required
27 in subsection 3.

28 2. The notice required by this section shall be served by
29 personal service or restricted certified mail and first class
30 mail to the last known address of the defendant and to the
31 defendant's attorney. The judgment creditor shall provide
32 the sheriff with the last known address of the defendant and
33 the defendant's attorney if there is an attorney of record.
34 Service shall not be made by a party to the action or an
35 attorney for a party to the action. Service may be made by

1 taking acknowledgment of service from the defendant. Proof of
2 ~~mailing or personal~~ such service ~~by the sheriff~~ shall be by
3 ~~affidavit~~ filed with the court.

4 3. The notice required by this section shall:

5 a. Inform the defendant that judgment has been entered in
6 the main action and the defendant's funds or other property is
7 subject to execution under the judgment.

8 b. Inform the defendant that the defendant has the right
9 to claim funds or other property exempt from execution or
10 garnishment and a right to ~~be timely heard on those claims~~
11 request and have a timely hearing before a judge to claim such
12 exemptions.

13 c. Inform the defendant that if the defendant does not file
14 a motion or other appropriate pleading to claim funds or other
15 property exempt from execution or garnishment under state or
16 federal law, the defendant may lose any such rights and the
17 funds or other property may be applied to the judgment against
18 the defendant.

19 d. Inform the defendant that state and federal laws may
20 place limits on the amount of earnings that may be garnished
21 annually and per pay period and limits on other funds and
22 property that may be garnished or levied against.

23 e. Contain the full text of section 630.3A.

24 f. State that the defendant may wish to consult a lawyer for
25 advice as to the meaning of the notice.

26 g. Inform the defendant that any garnishment for fines
27 imposed on a defendant in a criminal case is subject to section
28 909.6, including the provision that any law which exempts a
29 person's personal property from any lien or legal process is
30 not applicable for such garnishment.

31 4. An additional court filing fee shall not be assessed for
32 proceedings under this section.

33 Sec. 5. NEW SECTION. **642.14B Notice to defendant —**
34 **employer garnishees.**

35 If the garnishment is to earnings an employer owes a

1 defendant, the employer shall deliver the notice of garnishment
2 to the defendant with the remainder of or in lieu of the
3 defendant's earnings. The garnishee shall state in answer to
4 the sheriff's examination whether or not service of the notice
5 of garnishment was delivered to the defendant. The notice
6 required by this section shall contain the information required
7 by section 642.14A, subsection 3, and shall be delivered by
8 personal service, mail, or electronic means.

9 Sec. 6. NEW SECTION. **642.25 Sheriff not an agent.**

10 The sheriff's actions under this chapter, including service
11 of notice, shall not be construed to be that of an agent of any
12 person or party in the proceedings.